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# Ten reasons against boycotting the Beijing Olympics

Following alleged human rights abuses by China in Tibet, many governments and national Olympic committees (NOCs) have been considering boycotting the Beijing Olympic Games in protest. Alexandre Mestre of PLMJ Associados examines how the Olympic Charter protects against governments using sport to make a political standpoint, and presents ten legal, sporting and commercial reasons why NOCs should not boycott the Games.

On 13 July 2001 at the 112th International Olympic Committee (IOC) Session in Moscow, Beijing was elected the Host City for the Summer Olympic Games (OG) of the XXIX Olympiad, starting on 8 August and closing on 24 August 2008.

The People's Republic of China has been put under a microscope. Although Article 33 of the Constitution provides that '[t]he State respects and preserves human rights', several non-governmental organisations (NGOs), Human rights activists and States are protesting and have tried to demonstrate that China's policies contradict the mentioned constitutional statement, namely due to alleged human rights infringements in Tibet.

The International Olympic Committee (IOC) found itself in the middle of the state's conflicts and political interests. China is not only criticised but also confronted: while various governments admit that they will boycott the opening ceremony<sup>1</sup>, it is possible that some National Olympic Committees (NOCs) will succumb to Government pressures and decide not to participate in the OG. The Olympic movement fears these potential 'NOC boycotts', should they occur.

The purpose of this article is not to analyse China's behaviour in the field of human rights. Our aim is totally different: we intend to indicate ten reasons against 'NOC boycotts', as a modest contribution towards avoiding forceful and far-reaching attempts to break up that universal sports festival and guaranteeing the respect of the Olympic Charter (OC)<sup>2</sup>.

## Reasons against boycotts

'NOC boycotts' means to boycott peace and not to promote it. Further to the Second Fundamental Principle of Olympism enshrined

in the OC, '[t]he goal of Olympism is to place sport at the service of the harmonious development of man, with a view to promoting a peaceful society concerned with the preservation of human dignity'. Firstly, this means that the tool used by Olympism to accomplish its humanitarian goals is sport, not politics. Secondly, in a logical reasoning, since the OG represents the maximum expression of Olympism, to boycott such an event means to boycott the promotion of peace.

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'NOC boycotts' are State measures with no legal consequences for States

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Despite being just a document approved by the IOC, which is an association with the status of a legal person as ruled by Swiss law, the OC<sup>3</sup> is accepted as 'international agreement', as decided by the US Court of Appeals of the Ninth Circuit in one landmark case - *Martin v IOC*<sup>4</sup>. Taking into account the unique status of the IOC, the Court found '(...) persuasive the argument that a court should be wary of applying a state statute to alter the content of the Olympic Games' and revealed itself to be '(...) extremely hesitant to undertake the application of one state's statute to alter an event that is staged with competitors from the entire world under the terms of that agreement'.

Another argument might be raised in order to sustain that States must respect the OC: the OC can be defined as an 'international custom' in the sense of Article 38 (b) of the Statute of the International Court of Justice. 'Thus, the Olympic Movement is a sort of chosen agent of the international legal order'<sup>5</sup>, and its 'Constitution' constitutes a source of international law which contains the legal parameters for governmental action relating to the

Olympic Games.

Usually, States explicitly accept the 'supreme authority of the IOC'; an expression contained in Rule 1.1 OC. Two examples demonstrate this:

- in 1978, on the occasion of the Second Conference of European Sports Ministers, a resolution expressly recognising the authority of the OC was passed<sup>6</sup>;

- pursuant to Rule 34.3 OC, the following statement was included in the Candidate File of London for hosting the 2012 OG: 'The Prime Minister covenants that the United Kingdom Government will respect the provisions of the Olympic Charter (...).'

Despite this overall context, the fact is that the IOC - a NGO - has no power (namely disciplinary) to sanction the conduct of a State that contravenes the text of the OC.

Consequently, if a State pressures a NOC to boycott the Games, it cannot be sanctioned by any organ of the IOC.

We are also convinced that this sort of pressure cannot be sanctioned by the United Nations (UN). On the one hand, when States pressure their NOC to promote foreign policies through a NOC boycott, it is a way of settling international State disputes by peaceful means, with no use of force, without breaching Article 2 of the Charter of the UN<sup>7</sup>. On the other hand, that kind of pressure would infringe the 'Olympic Truce Resolution' entitled 'Building a peaceful and better world through sport and the Olympic ideal', approved at the 62nd Session of the UN General Assembly and adopted on 14 January 2008, but that document has just a recommendatory nature, i.e., it is non-legally binding<sup>8</sup>.

In summary, 'NOC boycotts' are State measures with no legal consequences for the concerned States.

**A NOC boycott, with a target in China, is a sanction against 'innocent Olympic athletes'**

'NOC boycotts' are State measures that sanction the NOC

Like any person or other organisation belonging in any capacity whatsoever to the Olympic Movement, a NOC is bound by the provisions of the OC and shall abide by the decisions of the IOC (Rule 1.2 OC).

A NOC must not take action against any form of discrimination through sport (Rule 28.2.5 OC), namely in the grounds of politics, since it is incompatible with belonging to the Olympic Movement (5th Fundamental Principle of Olympism, OC).

NOCs are also compelled to preserve their autonomy and to resist political pressures which may prevent it from complying with the OC (Rule 28.3.6 OC). This is coherent with the principle that Governments or other public authorities shall not designate any member of an NOC (Rule 29.4 OC).

It must also be stressed that each NOC is obliged to participate in the Games of the Olympiad by sending athletes (Rule 28.3.3 OC).

In this context, when a NOC decides not to send athletes to Beijing due to political reasons, it is failing to acknowledge the commands of the above-mentioned provisions of the OC.

The IOC has no doubts: 'the withdrawal of a duly entered delegation, team or individual, shall, if effected without the consent of the IOC Executive Board, constitute an infringement of the OC and shall be subject to an inquiry and may lead to measures or sanctions'<sup>9</sup>.

In accordance with Rule 23.1.4 OC, a NOC that boycotts the OG is subject to measures or sanctions - like a suspension - imposed by the IOC Executive Board, which determines the consequences for the NOC and its athletes, or a withdrawal of full recognition,

implicating that the NOC forfeits all rights conferred upon it in accordance with the OC.

'NOC boycotts' are State measures that sanction athletes 'Olympic Games are competitions between athletes in individual or team events and not between countries' (Rule 6.1. OC), a fact that explains why '[t]he IOC and the OCOG shall not draw up any global ranking per country' (Rule 58 OC). Bearing this in mind, we can easily conclude that a NOC boycott, with a target in China, is a sanction against 'innocent Olympic athletes'<sup>10</sup>, since it deprives them of the chance to take part in the OG<sup>11</sup>.

To deny the right of athletes to compete means to subordinate them to conflicting foreign policies and to hinder the concretisation of his or her life dream. More importantly, it prevents them from their fundamental right to access to sport (Article 1.1. of the 1978 UNESCO International Charter of Physical Education and Sport). We should not forget that '[t]he practice of sport is a human right. Every individual must have the possibility of practising sport, without discrimination of any kind'. (4th Fundamental Principle of Olympism, OC).

Before being selected by their NOC, an athlete only has an 'opportunity to participate or a privilege with obligations'<sup>12</sup>, but after being selected by the respective NOC to participate in the OG, the athlete already has an individual right to participate. However in practice, the athlete can only have access to that fundamental right via the NOC and has no mechanism for forcing the NOC to send him or her to the event.

Thus, the position of an athlete in the context of a NOC boycott is very weak. To confirm this, let us remind another landmark case -

DeFranz v USOC<sup>13</sup> - in which athletes argued that the USOC's boycott of the 1980 Olympics in Moscow violated their constitutional and statutory rights to compete. The Court dismissed the lawsuit and stated that '[m]any of life's disappointments, even major ones (like not having the opportunity to participate in the Olympics), do not enjoy constitutional protection'.

In order to mitigate this lack of protection of athletes, in the case of a 'NOC boycott' the IOC '(...) has an unenforceable right, to be granted at its discretion, to issue a "wild card" to athletes affected by such a boycott'.<sup>14</sup> Another solution is to allow athletes to participate with a flag containing the Olympic emblem (By-law to Rule 51, 6 OC)<sup>15</sup>. Nevertheless, this practise is not very common, since athletes often opt not to affront the NOC decision, and stay out of the OG.

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'NOC boycotts' would sanction Beijing and BOCOG, not the States

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Rule 37.1 OC stipulates that '[t]he NOC, the OCOG [the Organising Committee of the Olympic Games] and the host city are jointly and severally liable for all commitments entered into individually or collectively concerning the organisation and staging of the Olympic Games, excluding the financial responsibility for the organisation and staging of such Games, which shall be entirely assumed jointly and severally by the host city and the OCOG (...)':

Inevitably, in the case of multiple 'NOC boycotts' - for instance, only 81 of about 130 possible teams competed in the Games of Moscow - there will be great losses of income for the city of Beijing and for the BOCOG, namely due to the diminution of interest for the competition, TV audiences, tickets

and tourism, leading inevitably to financial problems and inherent liabilities. In addition, it is plausible that some contracts signed by the city of Beijing and/or by the BOCOG provide, in case of a NOC boycott, the right of the other party to be entitled to receive compensation or include this boycott in the definition of 'force majeure' and consequently give the other party the right to terminate the contract.

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'NOC boycotts' are State measures that sanction official partners

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'NOC boycotts' create 'economic violence'<sup>16</sup>, namely to IOC worldwide partners and to official partners of the 'Beijing 2008 Olympic Games' that run scared from a potential television ratings collapse and attempt to renegotiate terms of the contracts<sup>17</sup>. In fact, political measures can cause both financial sanctions and serious reputational damage (negative publicity) to third private entities which have invested a lot of resources on the OG, an event initially expected to have 205 NOC participating with the best individual athletes and teams in the world.

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A position in favour of 'NOC boycotts' adopted by EU institutions is not mandatory to the NOC

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In the past, the European Union called for sports boycotts in the framework of the political situation in Nigeria<sup>18</sup> and in Kosovo<sup>19</sup>. At present, while the European Commission declares that a boycott is not an appropriate answer to the problems of human rights, namely the religious and ethnic rights of Tibetans<sup>20</sup>, the European Parliament - both on the Joint Motion for a European Parliament resolution on the EU/China Summit-EU/China

human rights dialogue<sup>21</sup> and on a resolution on Tibet following on from its debate of 26 March<sup>22</sup> - condemned the alleged violations of human rights by China and called for a common European stance regarding attendance by EU leaders at the OG opening ceremony, but not for 'NOC boycotts'. But even in a hypothetical deliberation defending NOC boycotts, the NOC would naturally not be legally bound to that.

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'Beijing 2008 Olympic Games' fostered legal reforms in China

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Following an impulse from the Olympic Legislation Coordinating Team, some important legal reforms were produced in China, namely in the fields of sport, communications, public security, health and environmental protection. Even Human Rights Watch, one of the major critics of China's regime, expressly recognised that '[n]ew legislation was adopted on a wide range of issues such as property rights, labor contracts, administration of lawyers, access to public records, and handling emergencies'<sup>23</sup>. Without the OG, those reforms would be certainly postponed.

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'Beijing 2008 Olympic Games' are a vehicle for Human Rights Reform

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As emphasised by Julie H. LIU, 'The Beijing Games are an opportunity to use the prestige of hosting the Olympic Games to inspire compliance and respect of international human rights law'<sup>24</sup>, with the IOC acting as a 'driving force'. Two recent important statements by Jacques Rogge, President of the IOC, against 'violence for whatever reason'<sup>25</sup> and stressing that 'freedom of expression is a basic human right'<sup>26</sup>, clearly demonstrate that the OG can be really a vehicle for

fulfilling the commitments of China to international human rights.

Multiple 'NOC boycotts' would again put on the agenda the establishment of a permanent site of the OG

Multiple 'NOC boycotts' would again bring to the top of the Olympic agenda the idea of establishing a permanent site for the OG as a way to end boycotts by countries responding to policies of the host countries<sup>27</sup>. It must be remembered that after the US boycott of the 1980 Moscow Games, the Greek Prime Minister offered 1,250 acres of government-owned land to facilitate the establishment of a permanent site in Athens.

This scenario would jeopardise Pierre de Coubertin's concept of a transitory OG and would necessitate a change in the Rules of the Olympic Charter relating to the celebration, organisation and administration of the OG. A NOC must remain loyal to the principle of universalism (covering, in all different aspects, the five continents) and should carry out the ideals and roles designed by the Founder of the Modern OG.

In conclusion, there are at least 10 reasons against 'NOC boycotts' that might be added or linked to the motto of 'Beijing 2008 Olympic Games: One world, One dream'.

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1. [www.guardian.co.uk/commentisfree/2008/mar/30/olympicgames2008.china](http://www.guardian.co.uk/commentisfree/2008/mar/30/olympicgames2008.china), last visited on 30 March 2008.  
2. In a very impressive demonstration of unity, the 205 NOC, at the XVI ANOC (Association of the National Olympic Committees) General Assembly, which took place in Beijing on April 10, 2008,

approved a Declaration reaffirming their 'commitment to participate in the Games' - [www.acnolympic.org/en/index\\_en.html](http://www.acnolympic.org/en/index_en.html), last visited at 29 April 2008. However there is always a risk that some NOC boycotts could occur.  
3. Regarding the OC, cfr. Alexandre Mestre, 'The legal basis of the Olympic Charter', *World Sports Law Report*, Volume 5 Issue 11, p. 6.  
4. Quoted by Samuel Pizar, 'The Olympics and the Law', *Olympic Message* No 10, p. 17.  
5. James Nafziger, *International Sports Law*, Transnational Publishers, Inc, Dobbs Ferry, New York, 1986, p. 32.  
6. Resolution adopted by the Second Conference of European Ministers Responsible for Sport, 7 April 1978, reprinted in *Olympic Review*, June 1978, p. 391.  
7. Marta Lora-Tamayo Vallé considers that boycotts are clearly illegal when their aim is to induce or implicate coercive measures that violate the Charter of the UN, or when their objective is to confirm a diplomatic non-recognition, infringing international law - cfr. 'La representación internacional en el deporte', Editorial Dykinson, SL, Madrid, 2005, p. 16. For Paul Mastrocola, an illegality would only arise in case of a provoked conflict - cfr. 'The Lords of the rings: the role of a Olympic site selection as a weapon against human rights abuses: China's bid for the 2000 Olympics', *Boston College Third World Law Journal*, Vol. XV, Summer 1995, no. 2, p. 153.  
8. In this recommendation, the UN urged the Member States to observe, within the framework of the Charter of the UN, the Olympic Truce, individually and collectively, during the Beijing OG and called upon all Member States to cooperate with the IOC in its efforts to use sport as an instrument to promote peace, dialogue and reconciliation in areas of conflict during and beyond the OG period.  
9. Cfr. 'The Olympic Games: A Social Science Perspective', CABL, Oxfordshire, 2007, p. 101.  
10. Cfr. Dick Pound, 'Inside the Olympics', John Wiley & Sons Canada, Ltd, 2004, p. 101.  
11. Cfr. The IOC Athletes' Commission members statement at the close of a meeting in Lausanne on 24 April 2008, considering that boycotts 'only hurt the athletes'. [www.olympic.org/uk/news/media\\_centre/press\\_release\\_uk.asp?release=2549](http://www.olympic.org/uk/news/media_centre/press_release_uk.asp?release=2549). Last visited on 29 April 2008.  
12. Cfr. Robert Davis, 'Olympic Competition: an opportunity to participate or a privilege with obligations', *Proceedings of the International Association for Sports Law 5th International Congress*, 1997.

13. 492 F.Supp. 1181 (D.D.C), aff'd F.2d 221 (D.C.Cir.1980).  
14. Cfr. George Engelbrecht, 'The Individual Right to Participate in the Olympic Games', *The International Sports Law Journal* 2004, Issue 1-2, p.13.  
15. 'En février 1980, de façon à parer au boycott qui s'annonçait pour Moscou, il fut modifié la Charte olympique afin que chaque équipe puisse choisir de participer aux jeux derrière le drapeau olympique ou celui de son CNO. Cette option fut utilisée par la plupart des pays occidentaux présents à Moscou', Jean-Loup Chappelet, *Le Système Olympique*, PUG, Grenoble, 1991, p. 187.  
16. Pierre Mertens, 'Le boycott des Jeux Olympiques', *Revue belge de droit international XVIII* (1984-85), p. 200.  
17. Cfr. Michael Payne, 'Olympic Turn Around', London Business Press, 2005, p. 33.  
18. Cfr., inter alia, Common Position by the Council on the basis of Article J.2 of the Treaty on European Union on Nigeria, 4 December 1995, OJ L 309, 21-12-1995, p. 1.  
19. Cfr., inter alia, Conclusions of the European Council of General affairs in 26 April 1999 and 31 May 1999.  
20. Christiane Hohmann, [http://afp.google.com/article/ALeqM5iBL\\_E\\_im9jkvaaaB5zd8xDhUXOLMA](http://afp.google.com/article/ALeqM5iBL_E_im9jkvaaaB5zd8xDhUXOLMA), last visited on 17 March 2008.  
21. Adopted on 12 December 2007.  
22. [www.europarl.europa.eu/news/expert/infopress\\_page/030-26208-100-04-15-903-20080408IPR26107-09-04-2008-2008-true/default\\_en.htm](http://www.europarl.europa.eu/news/expert/infopress_page/030-26208-100-04-15-903-20080408IPR26107-09-04-2008-2008-true/default_en.htm), last visited on 11 April 2008.  
23. World Report 2008, Events of 2007, p. 262.  
24. 'Lighting the Torch of Human Rights: the Olympic Games as a Vehicle for Human Rights Reform', *Northwestern Journal of International Human Rights*, Vol. 5, Issue 2 (Spring 2007), p. 213.  
25. IOC Press Release, Sunday, 23 March 2008.  
26. IOC News Alert, Thursday 10 April 2008.  
27. Further to JoAnne D. SPOTTS, one possible legal way of creating such a permanent site could be a signature of a contract between Greece and the IOC, similar to what have been done by the UN and New York. In accordance to Section 7 of the Agreement Regarding the Headquarters of the United Nations, 'the headquarters district shall be under the control and authority of the United Nations', cfr. 'Global Politics and the Olympic Games. Separating the Two Oldest Games in History', 13 Dick. J. International Law, 1994-1995, pp. 120-121.



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